Law (Genl) (1933) Depart

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LAW (GENERAL) **DEPARTMENT.**

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Received ..... *Registered* 19

Subject.

Criminal Justice - S.C.40/32 on the file of Sessions Judge, South Kanara - Appeal against acquittal - Recommended.

ENCLOSURES.
No. .....
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No. L.Dis.10354-32.

Station Mangalore, *Dated the* 12th December 1932.

From (Name) E. M. Gawne, Esquire, I.C.S.,
(Designation) District Magistrate of South Kanara.

To The Secretary to the Government of Madras,
Law (General) Department,
M a d r a s.

Sir,

I recommend that the Government may be pleased to direct the Public Prosecutor, Madras to present an appeal to the High Court from the order of acquittal passed by the Sessions Judge, South Kanara in S.C.40/32 on his file.

2. This is an important case of murder in which three accused were charged - the 1st two under Sec.302 and the thi: under Secs.302 & 114 I.P.C. When the District Superintende: of Police proposed that an appeal should be preferred agains: the acquittal, I consulted the Public Prosecutor, Mangalore. He agrees with the District Superintendent of Police that

this is a fit case for appeal and has sent a draft of grounds of appeal.

3. I do not think that the Sessions Judge was right in disbelieving the evidence, especially of P.Ws.3 & 4. The evidence of P.W.3 is borne out by the results of a very detailed local inspection made by the Sessions Court with its assessors. Even D.Ws.1 & 2 support P.W.3 in the main, though naturally they said they did not recognise the assailants. When the close relationship of the potel to accused 1, 2 is admitted, there is nothing surprising in this witness not being too anxious to take information to the potel. This witness, like P.W.4, would have no anxiety to get embroiled in a murder case. The Sessions Judge considers it childish that a witness - P.W.4 actually - should not want to be a witness in a murder case. On the contrary, I should think that every reasonable person would consider it a great misfortune to be mixed up in a murder case as a witness. For anything up to six months such a person is sure to be harassed by investigating officers and attendance in Courts. P.W.4 was a Government servant of some standing and apparently the only reason for disbelieving him is that he is involved in some departmental trouble. It is impossible to imagine how this could be a motive for him to come forward as a false witness in a murder case. There is ample evidence that he told people in Mangalore immediately that he had seen the murder.

4. The police throughout were sanguine that they had got a very strong case. Information was received early and investigations started immediately. All the antecedent circumstances supported the motive for the murder. The accused also evidently felt that they were in a serious plight and obtained Mr. Eugent Grant from Madras to defend them. The acquittal was, therefore, a great disappointment since although the murder was in a locality where the people were the accuseds' tenants to whom they could look for support, it seemed that the cause of justice would be vindicated by the accidental presence of two disinterested

witnesses. I therefore agree with the District Superintendent of Police and the Public Prosecutor, Mangalore that this is a fit case for appeal.

5. Copy of the remarks of the District Superintendent of Police, and the grounds of appeal sent by him and also by the Public Prosecutor, Mangalore and a printed copy of the judgment in S.C.40/32 are submitted. The judgment was delivered on 24th October 1932.

Your obedient servant,

District Magistrate.

12.12.32

R.C.No. 2158/32
Genl.

Forwarded to the Dt. Magistrate, South Kanara.

This was a particularly sensational murder and brazenly executed in broad day light without any attempt at concealment. This lack of concealment is made a ground for disbelieving that the accused committed it. That the murder was committed at the time and place alleged is however an undisputed fact it could only have been committed by people who were absolutely assured of their influence and power to prevent the possible witnesses giving evidence against them. Having committed the murder there is certainly nothing unnatural in the conduct of the accused as described in the evidence carrying out the full object of the crime and getting possession of the will, the prevention of the formal execution and registration of which wa the sole object of the murder.

None of the evidence was really rebutted but doubt was thrown on the veracity of the witnesses by influences which appear almost to amount to special pleading.

Inspector Schamnad was "tied up" very much by Mr. Nugent Grant who appeared for the defence and was not nimble minded enough either to extricate himself nor to give the very simple explanation of the point over which he received the strictures.

Columns 3 & 4 of the Inquest report are for the names of those by whom the deceased was last seen alive and first seen dead. P.W.10 whose name finds place there was an inmate of deceased's house. He was the last person deceased saw as he left the house though a minute later he passed P.W.6 who was in the fields. P.W.10 was the first person who approached deceased's body after death and knew he was really dead though P.W.6 witnessed the killing from a distance. Even if P.W.6 were strictly the right person to be mentioned in Column 3 it is doubtful whether he was the right one for column 4 and in any case in a case of this nature if he had been allowed to explain himself in his own way the Inspector has some justification in saying these columns are only formal, it is in cases

where a body is found with no evidence as to the circumstances of the killing that these columns assume grave importance. It is not as if P.W._ is not mentioned in the inquest report. He was examined then as an eye witness and in column 11 the important one "Who was suspected and why" it is stated from the evidence of P.Ws.2,6 & 10 it is evident that the accused 1 and 2 killed deceased. While making much of the Inspector's being muddled over columns 3 & 4, the Sessions Judge failed to bring to notice that in any case W.6 was mentioned as having been examined as an eye witness in the most important column of the inquest report in column 11.

The witnesses were not really contradicted at all and there was no ground for acquittal. If you can see your way to sending the case up I request that the Public Prosecutor, Madras may be asked to fix a date and inform me so that a local Police Officer may be sent to go over the records with him.

Mangalore,
10th Novr.1932.

Sd/- W.H.Wright,
Dt.Superintendent of Police,
South Kanara.

(True copy)

For Dt.Magistrate.

13.12.32

Grounds of Appeal Memo in S.C.40/32.

The finding of the Sessions Judge acquitting the accused is against proved facts and strong probabilities of the case.

2. That the accused had very strong and immediate and adequate motive is not contested by the defence. In paras 1, 2 and 6 of the Judgment, facts relating to motive are clearly set out. That the draft will, proved beyond doubt was read out the evening before the murder and that the will was to be registered on the day after the murder, is not contested by the defence. Again it is not disputed that the entire property paying an assessment of Rs. 700/- was to be willed in favour of the second wife and her children, entirely depriving the 1st wife and her children of even what they had been given under the previous will of 1923 (Ex.E). The evidence of P.Ws. 2,6,8 and 9 may be perused in this connection.

3. The eye witnesses to the occurrence are P.Ws.3,4,5 and 6. The Sessions Judge was not justified in disbelieving their evidence.

4. P.W.3 is a disinterested witness and observation of the Lower court that he is interested and procured by one Muthanna Rai is not borne out by the evidence before court. Ex.I clearly shows that the land was voluntarily surrendered by P.W.3 himself. It does not indicate that the Potail (uncle of A.2) compelled him to surrender. The Sessions Judge is not quite sure that there was ill feeling on that account between P.W.3 and the Potail. The last sentence of para 10 shows beyond doubt that the Sessions Judge could not have placed much reliance on Ex.I.

5. P.W.3 is not a dependant of Muthanna Rai, brotherinlaw of the 2nd accused and an alleged enemy of the 2nd accused. The mere fact that Muthanna Rai has discarded his wife, sister of 2nd accused, does not by itself show that he is an enemy of 2nd accused. There is absolutely no evidence to show that Muthanna Rai is an enemy of the three accused. The Sessions

Judge was not justified in belittling the evidence of P.W.3 on these grounds.

6. At the local inspection it was clearly demostrated that P.W.3 could identify persons at the scene of the occurrence and in para 10 of the Judgment, the Sessions Judge concedes that P.W.3 could identify properly.

7. The mere fact that P.Ws.3 and 6 did not see each other does not by itself show that they did not see the occurrence. In fact P.W.3 says in 4 places in his deposition that he saw P.W.6 coming running through the fields towards the scene of offence and that D.W.1 met him and advised him not to go near, and both of them ran east. The Sessions Judge has also referred to this fact in para 9 of the Judgment. Even otherwise, at the time when a serious offence is being committed attention of witnesses is ordinarily rivetted on the occurrence. At such a moment witnesses are not expected to note whom all they saw at the time.

8. The Lower Court appears to conclude that because P.W.3 was examined at Mangalore that evening his evidence loses much of its force. It is not denied that P.W.3 owns a shop at Mangalore and at the time of the occurrence he was on his way to his shop. After reaching Mangalore he spoke to a number of people about the occurrence that he witnessed in the morning. P.W.3 was not available to the Police in the village. There is nothing unusual therefore, that his evidence comes on record in the evening after the Police return from the scene of occurrence.

9. P.W.3's failure to inform the Potail of what he saw cannot be a ground to discredit his evidence. He knew that the Potail is the uncle of A.2 and of A.1's wife and the scene of offence was visible from the place where the Potail was standing. P.W.3's explanation that he thought that the Potail might have himself seen the murder is not at all futile.

10. That P.W.3's evidence is worthy of belief is conclusively proved by the evidence of D.Ws.1 and 2 who were

admittedly with the accused at the time of the occurrence. These three witnesses agree as to the time, place, number of persons that attacked and mode of attack. D.W.2 even admits that the assailants had long knives. The only difference between P.W.3 on one side and D.Ws.1 and 2 on the other is that the latter state that the assailants could not be identified though their faces were uncovered. D.Ws.1 and 2 were examined only at the defence stage. P.W.3 was examined on the date of occurrence itself. On these facts the Sessions Judge was not justified in disbelieving the evidence of P.W.3 His evidence is entitled to credit.

11. The Sessions Judge was not again justified in disbelieving the evidence of P.Ws.4 and 5. P.W.4 is a responsible officer in the Excise Department and no motive has been alleged as to why he and his peon P.W.5 should depose that they have seen this murder. His note book Ex. II (a) which was got from the Circle Office to the Court by the defence at the defence stage proves beyond doubt that the Village Bajal where the occurrence took place is the first place that he visited on that morning. Ex. II (a) is not a faked book. It contains entries made by P.W.4's successor from 13-9-1932 onwards after P.W.4 handed over charge. It shows in chronological order that P.W.4 patrolled Bajal first then at 10 a.m. inspected the arrack shop of Alappe, and afterwards went to Mangalore. This is corroborated by the entry in column 3 of the official diary (Ex.II) where the actual route taken for the day is shown as Padavu - Maroli - Alappe - Bajal - Mangalore. The enclosure to the diary also shows that the arrack shop was visited at 10 a.m. though in the body of Ex.II it is the last entry for the day. That he jumbles up events in his official diary Ex.II does not in the least prove that Bajal was not the first village visited on the date of occurrence.

12. The Sessions Judge has erred in discrediting the evidence of P.Ws.4 and 5 on the ground that it must have been difficult for them to identify from 140 yards on a cloudy

morning with a drizzle, the features of moving men especially when those men were not known to the witnesses previously. In the first place there is nothing in the prosecution evidence to show that it was a cloudy morning with a drizzle. Further the evidence of P.Ws.4 and 5 shows that they knew A.1 and A.2 well, that they have been visiting the village about three times a month and they had to mark trees near the houses of the accused and the deceased. During the local inspection P.W.4 did identify P.W.3 from the place. Even P.W.10 a boy identified two out of three persons from that place.

13. The Sessions Judge's remarks on the conduct of P.W.4 cannot be construed to mean that P.W.4's evidence should be rejected in toto. P.W.4 has explained in his evidence that he did not go to the scene of offence, "as he thought it was unsafe for him to go there, the accused being influential people", and because Lokayya Shetty was dead and P.W.4 was "afraid to go near fearing that the rich accused might attack him also". P.W.4 did not keep the secret for himself but when he went to the Circle Office he informed his own ------- Inspector the same day and several others at Padavu. That P.Ws.4 and 5 were not available to the Police until the 8th is amply proved by his evidence and also by Ex. II (a) which shows that he was touring in distant villages until the 8th. Then again his reluctance to figure as a witness in the case has also to be considered in this connection.

14. The Sessions Judge has erred in attaching too much importance to what is evidently a mistake in the statement of P.W.4 before the committing Magistrate that he started at 6.15 a.m. He has not stated there "from Padavu" It ought to be "Kaje". P.W.5 has stated in both the Courts that they started at 5 a.m. from Padavu. The Sessions Judge has also erred in referring to the hour 6.30 a.m. noted by the Police Sub Inspector in the F.I.R. form in the printed column meant for date and hour of occurrence. That entry was not marked as an Exhibit, and the Sub Inspector who noted it has not been examined. The F.I.

Report itself Ex. D specifies the time to be about 7 a.m. and when this was recorded neither P.W.7 nor the Sub Inspector had personal knowledge as to the exact hour of murder. During the Inquest the exact hour was ascertained from witnesses and in the Inquest report the hour is noted as 7 a.m.

15. The Lower Court was not justified in disbelieving the evidence of P.W.6., interested though he is, being the son of P.W.2. Arguments against his evidence in para 14 of the Judgment are not convincing. . At such an anxious time it is difficult for eye witnesses to note all incidents and give -- evidence in minute detail. D.W.1's evidence goes a good deal to strengthen the statements of P.W.6. P.W.6's evidence was on Police record at the inquest held very soon after the murder and his name appears in column 11 of the Inquest report. On all material points P.Ws.3, 4 and 5 and D.Ws.1 and 2 corroborate him. The Sessions Judge therefore ought to have believed his evidence.

16. The names of the first two accused were on record at the Police station, Mangalore, at 8.30 a.m. is proved by Ex.D, information given at the station by P.W.7 - the son-in-law of P.W.2. This information was based on the facts narrated to him by D.W.1 and P.W.10 immediately after the occurrence. P.W.7 was examined at the inquest. His evidence is entitled to --- great weight.

17. In para 15 of the Judgment the Sessions Judge criticises the conduct of the Circle Inspector, P.W.12, for carelessly inserting P.W.10's name instead of P.W.6 in the ------- columns 3 and 4 of Ex. F - Inquest Report. No doubt the ---- answer given by the Circle Inspector is not one entitled to weight. Apart from the Circle Inspector's explanation it --- appears to be a clear mistake. The material circumstance in this connection is that P.W.6's name appears in column 11 of Ex.F - a column most important in any Inquest report. The observation of the Sessions Judge at the end of para 15 that

P.W.6 did not put himself forward and was not regarded as an eye witness loses all its force. That P.W.6 was ---- examined at the Inquest is not disputed. Such being the case the finding of the Judge regarding P.W.6 is clearly inconsistent.

18. The Sessions Judge went wrong in disbelieving the evidence of P.W.7. Evidence of D.W.1 probabilises that of P.W.7 without any reasonable doubt. The reasons given in para 16 are not sound. The conclusion arrived at in the said para is contradictory to the finding in para 20 where the Sessions Judge holds that the strongest circumstance against accused 1 and 2 is that their names find a place in Ex.D soon after the murder and that ----- therefore it is invested with an air of probability and -- truth.

19. The evidence of P.W.10 is dealt with in para 17 of the Judgment. P.W.10 was not in the cattle-shed as stated in the Judgment; but that he was far away from the shed and nearer the Bakimar field will be clear from the evidence of P.W.10. It is quite possible for him to hear D.W.1. If P.W.10 went a little distance to the west along the Bakimar field, he could clearly see accused 1 and 2 going in opposite directions.

20. Even granting that the accused did not hurriedly run away, the same is due to the fact that all lands and tenants' houses in the locality are owned admittedly by the families of the 1st and 2nd accused. Evidently the accused were not in a hurry to run away.

21. That the two accused were present at the Inquest held soon after the murder is admitted. The Sessions Judge is inclined to hold in para 18 of the Judgment that the presence of the accused at the Inquest indicates their innocence. Under the circumstances of the case this conclusion cannot be ---- supported. The one object of the murder was to get possession

of the draft will after murdering Lokayya Shetty. When the accused are so powerful in the village after Lokayya's death nothing would prevent them from having recourse to high handed deeds. There is nothing strange in their going to the house soon after the murder to get possession of the draft will. P.W.2's evidence is clear on the point. P.W.2 was examined at the earliest possible opportunity as is spoken to by P.W.12 Circle Inspector. Her evidence is unimpeachable. Observation of the Lower Court that inspite of the strong motive the accused would not have perpetrated the deed by themselves cannot be supported. In a village practically owned by the accused it is extremely unlikely that hired assassins would commit the murder. It would be extremely difficult to get such assassins within such a short time and that to commit murder of such an influential man as Lokayya in broad daylight and in the open. Real probability is that the accused 1 and 2 themselves must have done the deed. They have not complained either to the Police or to the Magistrate even though the deceased is father of the 1st accused and father-in-law of the 2nd accused. 3rd accused was there to lend his moral support and to come to --- their rescue in case there was necessity.

22. The Lower Court discusses the evidence of D.Ws.1 and 2 in para 19 and characterises them as huge liars and rogues of the deepest dye. From the evidence in the case and from their own statements, it may fairly be concluded that they knew the plot and that they were the partisans of the accused. P.W.3 and D.Ws.1 and 2 corroborate each other on all material points except in regard to the identity of the true assailants. ----- Evidence of P.Ws.2, 6, 7 and 10 proves beyond doubt that it was D.W.1, Hussain that gave them information of the occurrence. The Sessions Judge has rightly held in the abovesaid para 19 that P.W.7 must have got the information that he gave in the - station from D.W.1 Hussain and this he says is in the highest degree probable. Hussain is disbelieved when he denies he -- gave the information to P.W.7. The statements of D.Ws.1 and 2

speak for themselves.

The Sessions Judge ought to have convicted the ---- accused.

(True Copy)

For District Magistrate.

KMR
13-12

Grounds of appeal against the order of acquittal in Sessions Case No. 40/1932.

I. The judgment of the Sessions Judge so far as accused 1 and 2 are concerned is contrary to law, the weight of evidence, and the probabilities of the case, and has occasioned grave miscarriage of justice.

II. The admitted facts in this case are the following.-

(1) Lokayya Shetty was murdered on the morning of 1-7-1932 on the western bund of Bakimar field in Bajal village, about 20 yards from the honne tree while he was going as usual for a morning stroll along the fields.

(2) The assailants were two in number who came from the side of the honne tree with swords in hand and cut the deceased on the neck, which caused his fall and further cut him after he fell, causing 11 incised injuries and 1 contusion resulting in his death.

(3) There is no potail's report forthcoming regarding the murder, though the potail's house is close by--about two furlong from the scene of offence, and from where the scene is visible. The potail is the uncle of A.2 and his neice has married A.1

(4) Most of the properties in the neighbour-hood of the scene of offence belong either to the deceased, or to the potail and his wife, or to the family of the 2nd accused living in Kaidale House close by, and the residents are tenents and dependents of one or other of them. (vide para 4 of Judgment)

(5) A strong motive for accused 1 and 2 to commit the crime has been established by the prosecution, andthe existence of an adequate motive was not contested by the defence(para 6 of the Judgment).

(6) The names of A-1 and A-2 find a place in the first information report (exhibit D) which came into existence within a very short time after the murder (-8-45 a.m.) and before any appreciable interval for concoction; and the circumstances attending its origin invest it with an air of probability and truth (para 20 of Judgment.)

(7)

(7) The defence version that Lokayya Shetty was attacked and murdered by two unknown assailants is false and the evidence in support of it of D.W.s 1 and 2, who were admittedly present with the deceased at the time of the murder and who were A-4 and A-5 before the committing Magistrate, but were discharged by him, is rotten. These D.W.s 1 and 2, "are huge liars and rogues of the deepest dye. Their demeanour was unsatisfactory from beginning to end and they cut miserable figures in the witness box- Their conduct is strange and most suspicious. They know more of the murder than they have chosen to own". (para 19 of Judgment).

(8) Though A1 and A2 were the nearest relations of the deceased, being son and son-in-law of deceased-it is strange that neither of them took any action to inform the authorities about the murder. This has to be admitted as there is no record anywhere that they took any action in the matter of reporting the offence.

(9) The alibi set up by A-1 and A-2 has not been proved in any way.

III. The Sessions Judge has erred in finding that "it is difficult on the prosecution evidence as it stands, to hold that A-1 and A-2 were themselves the principals in this murder -- though it is possible that they planned and organised the murder and knew the assassins (para 20 of judgment). The grounds stated by the Sessions Judge for rejecting the evidence of P.W.s 3,4,5 and 6 who saw the murder , and of P.W. 10 who saw A.1 and A-2 going from the scene with swords in their hands, are neither sound nor tenable, and are opposed to the evidence on record.

IV. With regard to the evidence of P.W.3 Aithu Naika, though the Sessions Judge has rightly come to the conclusion on the point of identification that P.W. 3 could without difficulty identify the accused from the place at which he was at the time, he has erred in giving the following reasons for not accepting his evidence.-

(a) P.W. 3 failed to inform the potail what he saw though he saw the potail immediately after the occurrence and within half a furlong from himself. ~~His explanation that he though that the~~

furlong from himself. His explanation that he thought that the potail himself might have seen the murder is futile.

(b) Though the fact of his having witnessed the murder was probably known to many persons gathered at the spot immediately after the murder, it is strange that P.W. 3's evidence became available to the police only that evening presumably through Muthanna Rai an "alleged enemy" of A.2.

(c) It is extraordinary that P.W.s 3 and 6 should not have seen or noticed each other, if they saw the murder being committed. Both of them state that they did not see each other at the time of murder.

(d) P.W. 3 is alleged to be an enemy of the potail, uncle of A-2 and there is some foundation for this though not very much.

But regarding reason (a) P.W. 3 knew that the potail is the uncle of A-2 and of A 1's wife. The scene of offence is visible from the place where the potail was standing. and even from the potail's house. P.W. 3 deposed that about 10 or 20 people collected at the spot and the murder was known to all and that he saw P.W. 6 (deceased's son by the 2nd wife) also there. So P.W. 3 did not think it necessary to go and inform the Potail who was at a distance of half a furlong away and himself in a position to see the occurrence. His explanation is therefore not futile as remarked by the Judge.

Regarding reason (b) P.W. 3 is not to be held responsible if he was examined in the evening of the same day and not earlier. He came to Mangalore to his shop, and after P.W. 12 (th circle Inspector) returned to Mangalore from Bajal he was examined by P.W 12. Further, all the residents of the locality are admittedly the tenants and dependants of the potail and his wife and of the accused, and it is unlikely they would report the matter to the Police or mention P.W.3's name as an eye-witness, especially when the potail was working vigorously to hush up the evidence. Even D.W.s 1 and 2 whom everybody knew to have actually accompanied the deceased and to have been present at the time of the murder were kept back

by the potail and were not available to the Police till the next potail produced them before P.W. 12 on the evening of 3-7-1932. Even if Muthanna Rai is the "Alleged eneny" of A.2 there is no nothing to show that P.W. 3 is a dependant or creature of -- Muthanna Rai or that P.W. 3's evidence was got through him.

Regarding reason (c) The Judge is wrong in thinking that P.W.s 3 and 6 state that they did not see each other at the time of murder. P.W. 3 has deposed in 4 places and the -- Judge has referred in para 9 of the judgment that P.W. 3 saw P.W. 6 coming running through the fields towards the scene of offence and D.W. 1 met him and advised him not to go near and both of them ran east. The Memorandum of local inspection while it mentions that P.W. 3 could see P.W. 6 does not state that P.W. 6 could see P.W 3 from the place. Even assuming that P.W. 3 was within sight of P.W. 6. P.W. 6 had still no opportunity to observe P.W. 3 under the circumstances, as P.W. 6's attention was at the time directed towards the scene of -- offence where the accused were cutting the deceased who had fallen, and immediately afterwards he and D.W. 1 ran to the east and P.W. 6 could not be expected to look round as to who were in the neighbourhood as he was anxious to get a billhook and so ran to Pakkera Bhandary's house, and as he could not get one there, ran home and didnot return to the scene but went to Mangalore straight to report the matter to the Police.

Regarding reason (d) Exhibit I, Surrender Deed, shows that the potail and P.W. 3 were friends and not enemies. There is nothing to show that P.W. 3 was ousted from his land by the potail. P.W. 3's holding with the sugarcane crop was voluntarily surrendered by P.W. 3 to the Potail's wife as appears from Ex. I. "because he sustained loss and was unable to cultivate further, and at his humble request the arrears of rent were also waived" and he was granted receipt Ex. I (a) and further P.W. 3 also wanted to stick to his shop in Mangalore. Further P.W. 3's brother-in-law Annappa, with who, P.W. 3 resides in Bajal is still a tenant of the Potail's wife and his father in-law is still a tenant of the deceased. Both of them

were summoned as D.W.s, but were not examined.-

P.W. 3's evidence is corroborated in every detail by the evidence of D.W.s 1 and 2 (who were not available to the Police till 4-7-1932) except regarding the actual assailants who according to the latter were persons unknown which fact is disbelieved by the Judge. This circumstance alone is conclusive proof of P.W. 3's veracity.

V. With regard to P.W. 4, Raghuveera, the Sessions Judge though right in considering him of better status and social position than P.W. 3, is wrong in stating that he has proved very much worse witness. The reasons given are.-

(1) Difficulty of identification from a distance of about 140 yards on a cloudy morning with a drizzle.

(2) Especially when there are no reasons to suppose that P.W. 4 knew the men before very intimately.

(3) P.W. 10 identified only 2 persons from that place and failed to identify the other whom he knew well.

(4) P.W. 4's conduct after the murder.-

(a) Does not go near Lokayya after the assailants left, to find out if there was life in him or it had become exinct-

(b) Does not communicate the information at the police station to which he went.

(c) No explanation for failure to proceed to Bajal from Padil, only two miles further, to see the Circle Inspector.

d) Kept the secret to himself without disgorging it, that dy or the following day to the police. He tells the policeonly on 8-7-1932 what he saw on 1-7-1932.

(5) Suspension for fabricating false evidence and tampering with a register by making interlineations.

6) Exhibit II Diary, shows Bajal visit laterin the day. Relies on the note-book, Ex. II (a) where Bajal visit appears first on 1-7-1932 and says that he jumbles up events in his diary.

(7) Before committing Magistrate, said that he started from Pavu at 6-15 a.m. and denies it now. Even if he started from Pavu at 5 a.m. he could not have witnessed the murder at

6.30 a.m. which is the hour given for it in the F.I.R.Ex.D.

VI. P.W. 5, peon of P.W. 4, remarks the Sessions Judge, goes along with P.W. 4 in the weight to be attached to his testimo

But regarding the 1st reason the Sessions Judge is wrong in thinking that it was a cloudy morning with a drizzle. There is no evidence to support this. According to the calendar the sun rose at 6-9 a.m. that day. The identification from the high level marked G of persons at the scene of murder marked A in the plan is not at all difficult. P.W. 4 deposed that he could see the occurrence quite distinctly from where he was standing, but he was not tested regarding this during the local inspection though P.W. 4 standing at G was asked to identify P.W. 3 sitting in the field further away from A, and P.W. 4 did identify him. Even on a cloudy day one can identify better than an a sunny day as the sun's rays obstruct the vie when persons are to identify those standing on their eastern side. That it was a cloudy morning with a drizzle, was imported into the judgment from the evidence of D.W. 1 whom the Sessions Judge himself describes as " a huge liar and rogue o the deepest dye. a turn coat and a rascal without the slightest modicum of honesty or truth in him".

Regarding the second reason the Judge is wrong in thinking that P.W. 4 did not know the accused before very intimately. P.W. 4 had deposed that he knew the deceased, A-1 and A- that he has been excise Sub Inspector in that range since September 1931, and that he has been visiting the village about 3 times a month, and that P.W. 4 had to mark trees near the houses of the accused and th deceased. The defence has not even dared in cross-examination to challange the fact of P.C. 4's ~~acquitance~~ acquaintance with the accused and the deceased.

Regarding the 3rd reason, P.W. 4 cannot be held responsibl for P.W. 10's capacity or incapacity at identifying. Even P.W 10 did identify two out of 3 persons, a circumstance which clearly establishes the possibility of identification from the place marked G.

Regarding the fourth reason , there is nothing unnatural in the conduct of P.W. 4.

(a) P.W. 4 has explained in his evidence that he did not go to the scene because he thought it was unsafe for him to go to the place of murder, the accused being influential people and because Lokaya Shetty was dead, and he was afraid to go near, fearing that the rich accused might attack him also. The entire locality was inhabited by the tenants and relations of the accused.

(b) P.W. 4 did not give information to the constable in the police station because he had deposed that he came to know that the constable had information of the murder already and that the Circle Inspector and Sub Inspector had already proceeded to the scene, and that he therefore considered it unnecessary to tell the constable that he saw the murder.

(c) P.W. 4 did not follow the Circle Inspector after Padil because the pathway from Padil to Bajal is not accessible for cycles and on account of the rain at the time he stopped at the Padil arrack shop and inspected the same at 10 a.m. and returned to Mangalore to attend to a case before the Excise Inspector at 11 a.m.

(d) P.W. 4 did not keep the secret to himself, but when he went to the Circle Office, he informed about it to his Inspector the same day. Even at Padavu he had occasion to mention about it to others. The Excise Inspector was cited as a defence witness, but he was not examined. P.W. 4 was touring till the morning of 8-7-1932 and soon after his return to Padavu was examined by the Circle Inspector.

(e) P.W. 4 gave up the idea of informing the Police subsequent to his informing his own Inspector the very first day as he wanted to avoid coming as a witness in this case. So he did not go to the Police station subsequently on the 1st or 2nd July.1932. It is a well-known fact that respectable eye-witnesses avoid coming as witnesses in criminal cases on account of all sorts of attempts in cross-examination to dis-

discredit their evidence and unjust criticisms in the judgments. This case is an instance. P.W. 4 would never for his life figure as a witness even if murder were committed under his very nose P.W. 4's explanation is therefore not at all childish.

Regarding the 5th reason, the Judge is wrong in taking the suspension order into consdieration, when the same is pending in appeal, and when no charges were framed and no explanation was taken, and no enquiry was held before P.W. 4 was suspended.

Regarding the 6th reason, the note-book (Ex.II (a) is the first record of the Sub Inspector's work to be written in chronological order on the spot, and that shows that Bajal was patrolled first and the arrack shop was inspected at 10 a.m. and that afterwards P.W. 4 went to Mangalore. This is corroborated by column 3 of the Diary (Ex.II) where the actual route taken for the day is shown as-Padavu, Maroli, Alappe, Bajal and then Mangalore. The Diary (Ex.II) is not full in itself as some portions are to be written in the enclosure to Ex.II which shows that the arrack shop was inspected at 10 a.m. In the body of the diary (Ex.II) after the patrolling of the topes in Bajal, the inspection of the Alappe arrack shop is written and it is the last entry for the day (1-7-32). But the enclosure to the diary giving details shows that the inspection of Alleppe arrack shop was at 10 a.m. as noted in the note book Ex. II (a) Hence it is clear that no ---- chronological order is followed in writing the diary, which is only an abstract from the Note book written next morning. The Note book was called for by the defence from the Circle Office and contains entries made by P.W. 4's successor from 13-9-1932 onwards after P.W. 4 handedover charge.

Regarding the 7th reason, before the committing Magistrate P.W. 4 stted that he started at 6-15 a.m., it is not stated "from Padvu". What he did state was that he started at 6.15a.m. from Kaje By mistake the word "from Kaje" was not recorded. That this is clearly a mistake is also proved by his statement.

in both the Courts that he witnessed the offence at 7 A.M which he could not have done, had he started from Padavu at 6-15 A.M. P. W. 5 however has stated in both the Courts that they have started at 5 A.M. from Padavu and reached Kaje at daybreak. The defence cited four peons who accompanied P.Ws. and 5, butthey were not examined. The Judge is wrong in having attached any importance to the hour 6-30 A.M. noted by the Sub Inspector in the First Information Report form, in the printed column meant for date and hour of occurrence; when that entry was not marked as an exhibit in the case, the Sub Inspector who -- recorded it not having been even examined, in the face of Ex. D. which specifically fixes the time as about 7 A.M. When the First Information Report was recorded nobody had personal knowledge as to the exact hour of the murder. During the inquest the exact hour was ascertained from eyewitnesses and in the inquest report also the hour of murder is noted as 7 A.M. The Sessions Judge's finding that the offence was at 6-30 A.M. is not borne out by the recorded evidence in the case.

VI. P. W. 5, the Excise Peon, could not be said to go along with P.W. 4 in the weight to be attached to his testimony. He speaks only to the first two cuts given by A-1 and A-2 and nothingmore. He also deposes that he has known A-1 and A-2 and their names for a long time before that day. No reasons are given for disbelieving his evidence.

VII. With regard to P.W. 6, Aithappa Shetty, the Sessions Judge, states that his evidence is also strange and incredible in some respects for the following reasons:--

(1) P. W. 6 says he did not see P.W. 3 at the time of the murder, though he was right opposite to him and P.W. 3 returns the compliment.

(2) P.W. 6's search for the billhook at Pakira Bhandari's house could not have occupied more than a minute or two at the most. It is odd that he fails to meet P.Ws. 10 and P.W. 7 while returning home from Pakira's house. P. W. 2's story has been

introduced to account for the fact that P.W. 6 did not meet P.Ws. 10 and 7 on the way. The story of non-meeting is improbable and has to be told, for otherwise we would expect the complaint at the Police Station to be given by P.W. 6 himself, or at least it must have mentioned the fact that he was an eyewitness to the occurrence.

(3) The theory of mistake in Cols. 3 and 4 of the inquest report - Balakrishna, P.W. 10 for Aithappa Shetty, P.W. 6 - is inadmissible and it follows that at the very early stages of investigation and at the time of inquest, P.W. 6 did not put himself forward, and was not regarded as an eyewitness as it is professed now.

(4) It is not likely that P.W. 7 did not know before he left Bajal that P.W. 6 had seen the murder. Even if they did not meet each other that morning, it is probable that Hussain (D.W. 1) told P.W. 7 that P.W. 6 too saw the tragedy. There is no reference in the First Information Report., Ex. D. to P.W. 6. Is it due to the tremendous haste of P.W. 7 to inform the Police and get back or because it had not then been settled that he should be an eyewitness?

But regarding reason (1)

It has been shown already in discussing P.W. 3's evidence that the Judge is wrong in thinking that P.W. 3 did not see P.W. 6, and why P.W. 6 did not see P.W. 3 has also been explained

Regarding reason(2)-

There is nothing to show that P.W. 6's search for a bill hook at Pakira Bhandari's house lasted only for a minute or two. P.W. 6 was not questioned as to how long he was in Pakira Bhandari's house. P.W. 6 had to search the whole house for the billhook and this would not take less than 10 minutes and when he failed to find one he ran home. While he was searching for a billhook at Pakira Bhandari's house P.W. 10 had passed the house by the lower bund and so P.W. 6 could not meet P.W. 10. P.W. 7 did not proceed to the scene of offence, but ran straight from the place where D.W. 1 informed him to the Police Station even without going home and without taking his coat even and

and without meeting P.W. 2 By the time P.W. 6 went home P.W. 7 had gone to the Station and so P.W. 6 could not meet P.W. 7. There is nothing therefore improbable in this non-meeting as remarked by the Judge.

P.W. 6 after meeting his mother, P.W. 2, takes her home and goes to Mangalore to inform the Police, but was informed at the Station that the Circle Inspector, Sub Inspector and P.W. 7 had already gone to Bajal and thereupon he returns to Bajal when the Police were at the scene of murder and before the body of the deceased was removed from the field to the house, and at the inquest there given a statement about his witnessing theoffence. As. P.W. 7 did not meet P.W. 6 before he left Bajal for the Police Station and did not know that P.W. 6 had seen the occurrence, P.W. 7 could not give the information in the First Information Report about P.W. 6's being an eyewitness.

The place where P.W. 2 met D.W. 1 is close to the house of P.W. 2. As advised by D.W. 1. P.W. 2 returned home and again went out in search of P.W. 6 · It would not take more that two or three minutes for P.W. 2 to do this. P.W. 6 deposes that within 15 minutes of the murder he returned home.

P.W. 10 would require not more than three minutes to run from the house to the scene of murder, a distance of a furlong and a half. If P.W. 6's statement that he reached the house within 15 minutes after the murder, is to be --- believed, it is clear that he was in Pakira Bhandari's house for about 10 minutes, and there is no scope for P.W. 6 to meet either P.W. 10 or P.W. 7 on his way home from Pakira Bhandari's house.

Regarding reason (3)

Columns 3 and 4 of the inquest report are not meant to note the names of eyewitnesses. They are formal columns for noting the names of persons who saw the deceased last alive and who saw the deceased first dead. The columns meant for recording the statements of witnesses examined at

at the inquest have been deleted from the form used at present. In columns 3 and 4 the name of P.W. 10 was noted for P.W. 6's name by mistake. The Judge is wrong in stating that P.W. 6 did not put himself forward and was not regarded as an eyewitness at the time of the inquest and at the very early stages of investigation. P.W. 6 was the only eyewitness examined at the inquest and it was only from him the Police could ascertain at the time that A-1 and A-2 murdered the deceased. P.W. 6's name is found in Col. 11 which is an important column for noting "who was suspected and why". There it is clearly stated that from the evidence of P.W. 2, 6 and 10, it is evident that the death of the deceased was caused by A-1 and A-2. Although P.W. 7 was the first informant his name was not mentioned in col. 11 as he was not an eyewitness. This important point regarding P.W. 6 in col 11 has been entirely ignored by the Sessions Judge who has taken an entirely prejudicial view against the Police Inspector, P.W. 12, and has unnecessarily indulged in scathing remarks against him.

Regarding reason (4)

The First Information Report by P.W. 7 was based on the information furnished to him by D.W. 1 and not the result of P.W. 7's personal knowledge. D.W. 1 told P.W. 7 that A-2 held and A-1 cut the deceased, butthe evidence of the eyewitness P.W.3 shows that A-2 held the deceased first and both A-1 and A-2 cut the deceased, which later fact is corroborated by P.Ws. 4, 5 and 6 D.W. 1 did not mention to P.W. 7 that P.W. 6 was an eyewitness. It is doubtful and there is nothing to show that D.W. 1 knew that P.W. 6 had seen the occurrence, and was in a position to inform P.W. 7 about it, or whether knowing it failed to inform P.W. 7 about it P.W. 6 saw the cutting by A-1 and A-2 of the deceased as he was running, and when proceeding further P.W. 6 met D.W. 1 when the accused had stopped cutting the deceased. As D.W. 1 has been characterised by the Judge as a "huge liar and rogue of the deepest dye and a turn-coat and rascal without the slightest modicum of honesty or truth in him" no weight could

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be attached to his non-mention of material particulars to P.W.7 whose First Information Report has been rightly relied on by the Sessions Judge in para 20 of the Judgment as being probable and true. The non-mention of the name of P.W. 6 in the First Information Report cannot be construed to mean that it had not then been settled that P.W. 6 should be an eyewitness. There was no time to consider all these points. Facts as transpired and as informed to P.W. 7 by D.W. 1 were immediately reported by P.W. 7 at the Police Station. To believe the First Information Report as probable and true, and at the same time to doubt P.W. 7 is to blow hot and cold in the samebreath and is utterly unfair.

If the First Information Report does not mention P.W. 6's name, col. 11 of the inquest report which was prepared without any delay, mentions the name of P.W. 6.

VIII. The Sessions Judge, characterises the evidence of P.W. 10, Balakrishna as artificial because,

(1) It is absurd to believe that from the cattle shed where he was, he could hear the cries from the Bakimaru field calling "Narayana Anna" -- more than 350 yards, with many obstructions between.

(2) It is incredible that after the crime A-1 and A-2 remained near the spot to enable P.W. 10 to see oneof them going north and the other south carrying with them openly the very weapons of offence. They must have been fools to have gone about in this leisurely fashion instead of making themselves scarce instantly the murder was over.

(3) It is noteworthy that P.W. 10 does not see A-3 at all while P.W.3 says A-2 and A-3 went together south, while A-1 went north-

But there is nothing artificial in the evidence of P.W. 10.

Regarding reason (1)

The Sessions Judge is wrong in thinking that P.W. 10 heard the cries from a distance of 350 yards from the cattle

shed where he was at the time. The cries were evidently of D.W. 1 after he met P.W. 6 and after both ran east, and after P.W. 6 went to Pakira Bhandari's house, and from the extreme end of the Bakimaru field near the picottah, where P.W. 6 first heard the cries of the deceased. The Sessions Judge is wrong in fixing the scene of offence as the Bakimaru ~~fil~~ field and then measuring the distance from there to the cattle-shed as more than 350 yards. It will be clear from the plan, Ex.G. that the distance from the extreme end of the Bakimaru field to the cattle shed where P.W. 10 heard the cry is not more than a furlong and there are no obstructions of any sort between these two points. The obstructions exist only between the scene of offence and the cattle shed. Further all that P.W. 10 could mean was that he heard cries from the direction of the Bakimaru field and not actually from the said field itself, because he could not see D.W. 1 at the time, but only heard the cries from that direction. That P.W. 10 did not see D.W. 1 or know at the time that the cry was of D.W. 1 is evidenced from the fact that he informed P.W. 7 that somebody was calling him. The bakimaru field is not visible from the cattle shed where P.W. 10 heard the cries. That P.W. 10 is speaking the truth regarding the hearing of the cry is proved by the reference to this cry in the First Information Report. Ex. D. P.W. 2 also deposes that P.W. 10 told P.W. 7 that somebody was calling him from the directions of the Bakimaru field.

Regarding reason (2)

It is in evidence of P. Ws. and D.Ws. that D.W. 1 ran away from the scene of offence immediately after the deceased was attacked and met P.W. 6 and spoke to him. This speaking would not take more than a minute and both ran east - P.W. 6 going to Pakira Bhandari's house and D.W. 1 running towards the deceased house crying out "Narayana Anna". P.W. 10 after hearing this cry ran home and informed P.W. 7 about it and ran back and met D.W. 1 and on being informed by D.W. 1 about the murder of the deceased committed by A-1 and A-2, P.W. 10 ran to the scene of

offence. All this would not take more than five minutes after the murder. Therefore it was quite easy for P.W10 to see the accused 1 and 2 going away from the scene of murder. The actual place of where A-1 and A-2 were seen and how far away from the scene of murder, has not been elicited from P.W.10 and it cannot be said therefore that P.W. 10 saw them lingering at the scene of offence. P.W. 6 has deposed that he saw them going away from the scene and not at the scene itself. Regarding reason (3)

There is also no force in the Sessions Judge's remark that P.W. 10 did not observe A-3 along with A-2 as deposed to by P.W. 3. At that time P.W. 3 did not know that A-3 was one of the party of A-1 and A-2, nor was he informed about it by D.W.1. As a matter of fact A-3's name was not ---- mentioned by D.W. 1 to P.W. 7, who, if so informed, would have informed the same to the Police in his First Information Report. Hence there is nothing strange in P.W. 10's non-observing of A-3 as his attention at the time was ~~rivetted~~ on only A-1 and A-2. If he was a tutored witness he would have included A-3 also along with A-2 to support P.W.3.

Further the Sessions Judge is wrong in thinking that A-1 and A-2 must have been fools to have gone about in this leisurely fashion instead of making themselves scarce instantly after the murder was over. There was no reason for them to make themselves scarce, because as stated by the Sessions Judge in para 4 of the Judgment all the residents in the locality are either tenants or dependants of the accused and their relations. The murder was pre-meditated by the accused and was committed in broad daylight in the open field on a high level. The accused were certain that no one in the locality would give evidence against them, and that their relations including the Patil would help them and hush up any evidence against them. Even D.W. 1 and 2, a faithful and long standing servant and a relation remaining with the

deceased respectively who were admittedly present with the deceased at the time of murder have joined the accused's ~~sd~~ side due to the Potail(s influence and have deposed in favour of the accused. This will clearly show that the accused had full confidence and assurance that no one in the locality would go against them and as such there was no necessity for them to hurry away and make themselves scarce instantly after the murder ~~=~~ ., as expected by the Sessions Judge.

IX. P.W. 2's evidence regarding removal of the draft will by A-1 and A-3 after the murder is disbelieved by the Sessions Judge for the following reasons:--

(1) A-1 must be a dare devil actor - appearing before his enemy in the twinkling of an eye, after committing the crime, disappearing from the scene as quickly before the arrival of the Police and reappearing at the time of the inquest as a son immersed in ~~fr~~ grief at the sudden and ~~orcul~~ fate of the father.

(2) The will in the stage of a mere draft was innocuous and had no intrinsic value and Lokayya had been definitely put out of action.

(3) Though the absence of A-1 and A-2 from the inquest would have fastened suspicions against them very strongly, it required nerves of steel to be present at the inquest so soon after the murder - getting into the lion's jaws, the full strength of the Police.

But the Sessions Judge ignores the fact that the accused are Bunts, ~~(a middlemen class, and not Brahmins, or clerical class. Further, the accused are~~ well built young men goaded by hatred and vindictive spirit against the deceased for h ving taken active steps and ready to register a document depriving them entirely of everything and every inch of the extensive properties given to them according to the registered will of 1927, and giving the same to the deceased's mistress

wife absolutely.

Regarding reason (1)

The Sessions Judge is wrong in thinking that A-1 appeared before his enemy in the twinkling of an eye after committing murder and disappeared quickly before the arrival of the Police and reappearing at the time of the inquest as an aggrieved son A man who murdered his own father in the open field and in broad day light would not hesitate to go to the deceased's house with sword in hand along with others, especially when he did not know that P.W. 6 and 7 had gone away to Mangalore and expected them to be in the house itself, especially when it was his own house. The Sessions Judge is also wrong in thinking that A-1 appeared at the house in the twinkling of an eye. It was about half an hour after the murder that A-1 went to the house with his men. The departure from the house after taking away the box containing all the wills - both old and new - was also some time before the arrival of the Police. The re-appearance at the inquest has been rightly explained by the Sessions Judge as due to the fact that the absence of the accuse at the inquest would have fastened suspicions against them very strongly. Even then accused 1 and 2 did not ask any one how Lokayya Shetty came by his fate. They did not say anything

Regarding reason (2)

A-1 was not in a position to know whether the draft had or had not any intrinsic value. The object of the murder was to prevent the deceased from registering the will depriving the accused of all that had been given to them under the will of 1927. The accused were informed the previous night, evidently by D.Ws. 1 and 2 that some written will had been brought to the deceased's house and they had no reason to suppose that it was a mere draft. Therefore the main object of the accused after the murder was to remove the will away from the deceased's house so as to make it inaccessible to

P.W. 2 and her children who were living in the said house, and in pursuance of that object A-1 and A-3 with their men went to the deceased's house and took away the box containing the said will and other records before the arrival of the Polic Even assuming that the draft will was known by the accused to be innocuous still the accused would like to remove even the trace of such a draft will as the same would prove the motive of the murder committed by the accused.

Regarding reason (3)

The Sessions Judge evidently does not know the spirit and nature of the Bunts of this District, who (~~belong to a fighting race, are~~) wouldnot require hireling to commit such dastardly crimes. Further it is not easy to secure persons who could be hired to commit murder in broad daylight and under circumstances like this running the risk of going to the gallows. Even assuming that the accused were inclined to carry out their object through hirelings there was hardly any time to secure such persons as the draft will had been brought to the deceased's house less than 12 hours before his murder.

X. It is abundantly clear that the Sessions Judge has entirely misappreciated the evidence for the prosecution regarding the murder. The evidence of the eyewitnesses - P.Ws. 3, 4, 5 and 6 is consistent and disinterested, except perhaps that of P.W. 6 who is the son of the deceased by the second wife P.W. 2, but whose name appears as the only eyewitness in the inquest report - col. 11, ~~evidently~~ entirely ignored by the Sessions Judge. Their evidence is most probable and free from discrepancies of any sort. It was extremely difficult to get eyewitnesses to this dastardly and heinous murder in the midst of the tenants and dependants of the accused and their near relations, the Village Potail and others. Providentially P.Ws. 3, 4 and 5 happened to be near, unknown and unseen by the accused. There is absolutely no motive for them to perjure against the accused and send them

to the gallows. The Circle Inspector- P.W.12, deserved to be congratulated on his success in getting the evidence of the said eyewitnesses in the face of the attempts of the influential and rich relations and connections of the accused all over the locality and elsewhere to hush up the crime. The stricture passed by the Sessions Judge on P.W. 12 are not at all justified and cannot in any sense materially affect the merits of the case, and the evidence of the eyewitnesses P.Ws. 3, 4, 5 and 6. The reasons given by the Sessions Judge to reject the evidence of the witnesses are, as already shown, opposed to the recorded evidence and probabilities. This is aclear case for conviction and there are no extenuatin circumstances of any sort in favour of the accused.

XI. To briefly sum up

(1) These accused 1 and 2 had a strong motive to murder the deceased, to prevent him from preventing the new will, entirely depriving them of valuable and extensive properties previously bequeathed to them under the will of 1927 (Ex. E.) and giving the same to the deceased's mistress wife - P.W. 2 and her children. The defence has conceded the existence of this motive.

(2) Their names are in the F.I.R. (Ex.D) recorded at 8 45 a.m. at the Mangalore Taluk Police Station within 1½ hours after the murder. The Judge had to admit that the circumstances attending its origin invest it with an air of probability and truth.

(3) The Judge finds that P.W. 3 could identify the accused from the place where he was, but rejects his evidence mainly on the ground that he did not see PW.6 there. But P.W.6 has deposed before the Sessions Judge in four places both in examination-in-chief and in cross-examination that he saw P.W. 6 coming running through the fields towards the scene of offence. His failure to inform the potail as explained by him cannot be construed to mean that he was not present there in

view of the evidence of D.W s 1 and 2.

(4) The Judge rejects P.W.4's evidence on flimsy grounds. P.W 4 has sworn in his deposition that he could clearly identify the accused from the place where he was, and that he knew them even previously. During the local inspection P.W.4 was not asked to identify any one at the scene of murder from that -- place. but the Judge states that identification from that place is difficult on a cloudy morning with a drizzle. though P.W.4 identified P.W. 3 during local inspection at a place further - away from the scene of murder, and though there is no evidence that it was a cloudy morning with a drizzle except that of - D.W.1 who, the Judge rightly characterised as a false witness and though P.W. 10 did identify from that place two out of three persons at the place of murder. There is nothing strange in his conduct or in his idea to avoid coming as a witness in this case. His official diary, Ex. II and his note-book, Ex. II (a) fully support his evidence.

(5) The Judge gives no reasons at all to disbelieve P.W.5.

(6) The Judge's remarks regarding P.W. 6 are against the recorded evidence and the fact that he did not meet P.W. 10 and 7 on his way home has been explained and there is nothing improbable in this, which is after all not an important point. The Judge has ignored the most important point in the inquest report that P.W. 6's name appears in its 11th column. as the one from whom it was ascertained that the deceased was murdered by A.1 and A.2. The non-mention of his name in the F.I.R. as an eye-witness is easily explained. P.W. 7 did not meet P.W.6 before he laid his F.I.R. and did not know at the time that P.W. 6 had seen A.1 and A2 cutting the deceased.

(7) There is nothing improbable in the evidence of P.W.10 that he saw A.1 and A2 going away from the scene of murder with swords in hand.

(8) There is nothing unnatural in the conduct of the accused in not making themselves scare immediately after the murder andin their attempt to take away the box containing the will from the deceased's house immediately after or in their

coming to the place of inquest. The entire locality was their own fortress, the draft will was their main grievance. and their absence at the time of inquest would have been construed as definite proof of their guilt.

(9) ~~There is no dare devilry among the fighting class to which the accused belong~~ and there is nothing unnatural and improbable in the accused themselves brutally murdering the deceased.

XII In these circumstances the Judgment acquitting A.1 and A2 is clearly erraneous and has to be set aside and --- accused 1 and 2 have to be dealt with according to law.

M Chaudhuri
B. Dn
10/4/52

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JUDICIAL **DEPARTMENT.** 31.12.32 C.F. No.

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Received 31 DEC 1932 GOVERNMENT OF MADRAS LAW DEPARTMENT 19. *Registered* 19

Subject.

Criminal Appeal - Appeal against acquittal - S.C. No. 40/32 on the file of the Sessions Judge, South Kanara, Endorsement No. 6252 B-1, Law (General), dated 16-12-1932 - Forwarding Opinion.

ENCLOSURES.
No.
Spare copies

Opinion No. 62/32

Station Madras, *Dated the* 28th December 1932

From (Name) L.H. Bewes Esq.,
(Designation) Public Prosecutor.

To The Secretary to the Government of Madras,
Law (General) Department.

Sir,

/ Pkg awk

With reference to Endorsement No. 6252 B-1, Law (General), dated the 16th instant, I have the honour to forward herewith my opinion in the matter. / pp 44-47 mks

The papers received for reference are herewith returned.

I have the honour to be,
Sir,
Your most obedient servant,

L. H. Bewes

Public Prosecutor.

TSR/28-12-32.

Endorsement No. 6252 B-1, Law (General), dated 16-12-32

OPINION.

In this case the three accused, the first two of whom were charged for murder and the third for abetment thereof, were acquitted by the learned Sessions Judge of South Kanara. The first accused is one of the sons of the deceased by his first wife and the second accused has married the sister of the first accused; the third accused being a distant relation of the deceased. The deceased had also a second wife by whom he had a number of children.

The evidence is that on the day previous to the murder the deceased had had a will drafted whereby he proposed to leave his entire properties to his second wife and his children by her. The first wife's children felt disappointed at this and the accused had the deceased murdered at the field where he had gone on the morning of the first July 1932. There is sufficient evidence of motive in this case. But the question is whether there is trustworthy evidence as to the actual murder. P.Ws. 3, 4, 5 and 6 are said to be the alleged eye-witnesses. The learned Sessions Judge has minutely discussed the evidence of these witnesses and has come to the conclusion that no reliance can be placed upon their evidence. P.W. 3, who keeps a petty shop in Mangalore, says he saw the accused 1 and 2 both cutting the deceased with swords, accused 2 from behind and the first accused being in front. This witness admits he saw the Potail

immediately after the occurrence but he would not mention anything about what he saw to the Potail. The reason that he gives for his silence cannot be accepted. Further the prosecution case is that 10 to 20 people gathered at the spot immediately after the murder but none of them has been examined. The first information, Ex. D, which was given by P.W. 7 who is not an eye-witness, but who had his information from P.W. 6 and D.W. 1 does not mention that the second accused cut the deceased with a sword. In fact, no cutting is attributed to the second accused. The next witness, P.W. 4, is the Sub Inspector of Excise. Though he went to the Police Station to give information, he did not make any complaint at the police station, because, he says he was told that the Inspector and the Sub Inspector had left for the village where the occurrence had taken place; and thereupon he follows the Inspector and the Sub Inspector on a bicycle. But it is strange that when he is within two miles of the place of occurrence where the Inspector ought to have gone, he changes his mind and returns without giving any information of the occurrence to the Police Inspector and he is examined by the Police only about a week later. In cross examination it was elicited that he was suspended for fabricating false evidence and the official diary which he was keeping and on which he relies to prove the hours at which he visited the village of Bajal has been proved to be not a regular book. The official diary, Ex. 2, jumbles up the

events and does not follow any chronological order. If his official diary has to be relied on, he came to this village only later on the day of occurrence. In the Committing Court he said that he left Padav at 6-15 A.M. that morning; but in the Sessions Court he said he left that village at 5 A.M. to go to Bajal. In either case he could not have witnessed the occurrence at 6-30 A.M. in Bajal village. It is also strange that a witness in the position of P.W. 4 should commit such mistakes and the evidence of P.W. 5, his peon should also be of the same type. P.W. 6 is an interested witness being the son of the deceased by his second wife. The learned Judge finds from the local inspection that this witness ought to have been standing opposite to P.W. 3 if he had observed the occurrence, but P.W. 6 denies he saw P.W. 3 there and P.W. 3 also denies that he saw P.W. 6 there. Though according to the prosecution case P.W. 6 was the person who last saw the deceased alive and first saw him dead, the Circle Inspector, P.W. 12, mentions the names of P.W. 10 and D.Ws. 1 and 2 in columns 3 and 4 of the Inquest Report; and when asked about it, the Inspector says that he did not attach much importance to the formal columns of the Inquest Report and that he does not generally read through the report to find if it is accurate. This is certainly an unsatisfactory piece of evidence. The learned Judge has also adverted to other weaknesses in the evidence of P.W. 6.

The

The defence witnesses 1 and 2, who admittedly accompanied the deceased to the field where he was murdered, ought to have known who his assailants were; but they pretend not to know the identity of the assailants. D.Ws. 1 and 2 were also accused in the Committing Court but have been discharged by the Magistrate. The weapons with which the deceased was alleged to have been attacked by accused 1 and 2 have not been traced. There is no doubt that the names of accused 1 and 2 do find a place in Ex. D which came into existence within a very short time after the occurrence. But considering the evidence and also the fact that the accused 1 and 2 did not make themselves scarce, but were present at the inquest, it cannot be said that the prosecution has proved the case against the accused beyond reasonable doubt. The Assessors were of the unanimous opinion that the accused were not guilty.

I am therefore of opinion that an appeal against the acquittal in this case is not likely to be successful.

Madras,
28th December 1932.

T. H. Beeson.
Public Prosecutor.

TSR/28-12-32.

MW 40/31
5/1

GOVERNMENT OF MADRAS

LAW I-4—120—22-12-30.

*Received*_____193 . *Registered*_____193

Criminal appeal- **Appeal against acquittal—~~Negatived.~~**

Sessions Case No. 40/32, Sessions Judge, South Kanara - Declined.

LAW (GENERAL) DEPARTMENT.

READ—the following papers:—

Crto. 6252-B From the District Magistrate, S. Kanara, No. 10354/32 dated 12-12-1932 pp 1-4 ICF

Endorsement to the Public Prosecutor, Madras, No. 6252-B dated 16-12-1932 pp 4 CF

6452-B From the Public Prosecutor, Madras, No. 62/32, dated 28-12-1932 pp 3 (1) C

ORDER—Mis. No. 41, dated 5-1-1933.

The Government do not consider it advisable to appeal to the High Court against the judgment of the Sessions Judge, South Kanara acquitting the accused in S.C. No. 40 of 1932 on his file.

Le Hon'ble 4/1/33 CF

8/3-1-33.

Law 3-1-33

4/1/33

(True Extract.)

S Uno 4/1/33

C Law 4-1-33

2

4 JAN 1933

GOVERNMENT OF MADRAS

2 Inform

Secretary to Government. MBW/33

To

The District Magistrate, South Kanara - (with a copy of P.P's opinion and the Sessions Judgment).

The Public Prosecutor, Madras. (pp 1-4 CF w...)